

Virginia's Civil Commitment Process

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ECO

Virginia Code § 37.2-808

- Emergency Custody Order (ECO) - order issued by a magistrate that requires any person in the magistrate's judicial district who is incapable of volunteering or unwilling to volunteer for treatment to be taken into custody and transported for an evaluation in order to assess the need for hospitalization or treatment

ECO

- ECO can be issued on the sworn petition of any responsible person or on magistrate's own motion
- Issued when magistrate finds probable cause to believe that a person meets the commitment criteria
 - Mental illness
 - Substantial likelihood that person will in near future
 - Cause serious physical harm to self or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant info, if any
 - Suffer serious harm due to lack of capacity to protect himself from harm or to provide for his basic human needs

ECO

- Magistrate may consider
 - Recommendations of any treating or examining physician or psychologist
 - Past actions of the person
 - Past mental health treatment
 - Relevant hearsay
 - Any medical records available
 - Affidavits if the witness is unavailable and the affidavit so states
 - Any other relevant information

ECO

- Period of custody not to exceed 4 hours
- ECO extension
 - ECO can be extended for an additional two hours if requested by a family member, CSB, treating physician or law enforcement and magistrate finds good cause exists to grant the extension
 - Good cause includes the need for additional time to allow
 - CSB to identify a facility of temporary detention
 - Medical evaluation

TDO

Virginia Code § 37.2-809

- Temporary Detention Order (TDO) - an order issued by a magistrate that authorizes law enforcement to take a person into custody and transport to a facility designated on the order

TDO

- Issued on sworn petition of any responsible person or magistrate's own motion
- Only after an in-person evaluation by CSB employee or designee
 - Exception: TDO may be issued without an ECO evaluation if the person has been examined within the previous 72 hours by the CSB or there is significant physical, psychological, or medical risk to the person or others associated with conducting such evaluation.

TDO-Criteria

- Issued when magistrate finds probable cause to believe that a person meets the commitment criteria
- Magistrate may consider
 - Recommendations of any treating or examining physician or psychologist
 - Past actions of the person
 - Past mental health treatment
 - Relevant hearsay
 - Any medical records available
 - Affidavits if the witness is unavailable and the affidavit so states
 - Any other relevant information

TDO – Facility of Temporary Detention

- CSB must determine the facility of temporary detention
- Must be identified on the preadmission screening report
- Must be indicated on the TDO
- Person shall remain in custody of law enforcement until custody has been accepted by the facility identified in the TDO

TDO - Duration

- Duration of temporary detention shall be sufficient to allow for completion of the preadmission screening report, the independent examination, and initiation of mental health treatment to stabilize the person
- Shall not exceed 48 hours
 - Unless the 48 hour period ends on a Saturday, Sunday, or legal holiday and then the person can be detained until close of business on the next business day

Hearing - Timing

- Held after sufficient time to allow for completion of the preadmission screening report, the independent examination, and initiation of mental health treatment to stabilize the person but within 48 hours of execution of TDO unless Saturday, Sunday or legal holiday and then extended to the next day that is not a Saturday, Sunday or legal holiday
- At least 12 hours prior to the hearing, the court shall provide the CSB with the time and location of the hearing.

Hearing

- Held before a district court judge or special justice
- Individual is represented by counsel, who provides a written explanation of the process and explains it prior to the hearing
- Petitioner is given notice of the place, date, and time of hearing
- Open to the public

Hearing - Reports

- Preadmission screening report (§ 37.2-816)
 - Shall be admitted as evidence of the facts stated therein
- Independent Examination (§ 37.2-815)
 - May be accepted into evidence unless objected to, in which case the examiner must attend the hearing in person or by electronic communication

Hearing - Attendance

- An employee of the CSB that prepared the preadmission screening report must attend the hearing
 - If physical attendance is not practicable, shall participate through electronic communication
- Independent examiner, if not physically present, and the treating physician at the facility of temporary detention must be available whenever possible for questioning through electronic communication

Hearing - Evidence

- Judge or special justice may consider:
 - Recommendations of any treating or examining physician or psychologist
 - Past actions of the person
 - Past mental health treatment
 - Examiner's certification
 - Preadmission screening report
 - Any health records available
 - Any other relevant evidence that was admitted

Hearing - Disposition

- Possible Dispositions
 - Voluntary Admission
 - Involuntary Admission
 - Mandatory Outpatient Treatment
 - Three types: MOT, Step-down MOT, MOT on Motion
 - Release